

and for any form of indeterminate sentence and for release upon parole, etc.

The reason for the provision—I do not think I can say anybody has researched behind every provision in the Constitution—but the history behind this particular provision was for the purpose of getting around the separation of powers. In other words, this is apparently considered to be executive power exercised by the court. Yet today we figure it almost universally as part of the judicial power. It seems to me there are a lot of jokers in this particular provision.

We set it up within the framework. We may have set up the legislative department, executive department, and judiciary. That is where we get our separation of powers, and not in this language that has been set up in this particular provision.

I might also point out that these questions were raised in the Committee and never answered en masse. There were prevented appeals and they had to require constitutional amendments to determine whether or not a statute was constitutional or to interpret statutes. It is a crazy provision and has given a lot of problems and has been observed more than it needs observance.

THE CHAIRMAN: Delegate Pullen.

DELEGATE PULLEN: Mr. Chairman, I am not sure whether you are talking in opposition. I want to be in opposition.

THE CHAIRMAN: You may speak.

DELEGATE PULLEN: I would like to read a political statement upon which our founding fathers put this in to the Constitution, and I think that it should stay there. This is from Montesquieu, 1748.

“The political liberty of the subject is a tranquility of mind arising from the opinion each person has of his safety. In order to have this liberty, it is requisite the government be so constituted as one man need not be afraid of another.

“When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehension may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner.

“Again, there is no liberty, if the judicial power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would then

be the legislator. Were it joined to the executive power, the judge might behave with violence and oppression.”

I state my objection to a statement by he who said, he only earns his right to freedom and existence who daily conquers them anew.

I think this a matter of historical development of the rights and liberties of democratic people. I am not concerned with the hypocrisies of the law.

THE CHAIRMAN: Is there any further discussion?

Delegate Macdonald.

DELEGATE MACDONALD: Mr. Chairman, I rise to support the amendment. I can state from personal experience that this amendment is contrary to the governmental structure in Montgomery County, and the structure that they have had since late 1948.

Under the charter in Montgomery County, the executive and the legislative branches are combined. The County Council is the executive and it is also the legislative branch.

This is in accordance with good municipal practice. This is the governmental structure which is recommended by the National Municipal League. It is a governmental structure which is practiced throughout the United States in hundreds, if not thousands, of municipalities. Since we have mandated home rule under the constitution, and the various counties of this State will be adopting their own charter, they certainly should be at liberty to adopt the charter which embodies that structure, and we should not put an impediment in the way.

I support the amendment.

THE CHAIRMAN: Delegate Grant, do you desire to speak in opposition?

DELEGATE GRANT: I desire to speak in opposition.

In 1776 by a margin of exactly one vote the separation of powers doctrine was adopted for Maryland. It is one of the most fundamental doctrines in the American constitutional law.

Following up what Delegate Pullen said, I only have to point out, when it is violated what results. I think you know the case of the runaway agency. You cannot tell which agency is doing what to whom, and that is because an agency is estab-